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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Bruce Buffam

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EXAMINER

VINCENT, DAVID ROBERT

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/823,808	Applicant(s) BUFFAM, BRUCE	
	Examiner David R Vincent	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2661

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-15, and 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Setting up a non-multiplexed link (later claimed as an ATM link) is not disclosed. It is the examiner's position that packet switched links such as ATM AAL2 and even PSTN links using T1 lines are in fact multiplexed. A non multiplexed link would imply a direct connection as in a piece of fiber/copper run between the source and destination. (see e.g., Tomlins/US 6,618,383: col. 5, lines 28-41).

Response to Arguments

3. Applicant's arguments filed 1/18/05 have been fully considered but they are not persuasive.

Art Unit: 2661

In response to the USC 112 rejection the applicant argued a non-multiplexed connection is one that carries the cells of only a single data transmission at a time.

4. In response to applicant's arguments, the examiner maintains that a non multiplexed link would imply a direct connection as in a piece of fiber/copper run between the source and destination. (see e.g., Tomlins/US 6,618,383: col. 5, lines 28-41). In other words the so called non-multiplexed connections (applicant's 150, Fig. 1; 450, Fig. 4; 155; section 15-16) are in fact multiplexed and the applicant has still not explained how a non-multiplexed connection is set up when the applicant is using ATM, and AAL2. The examiner has submitted proof (US 6,618,383) that ATM connections are in fact multiplexed, and the applicant has not offered any proof that the claimed non-multiplexed connection is not multiplexed over or into e.g., a SDH/155 Mbps transmission line.

Regarding the statement about how a non-multiplexed connection is one that carries the cells of only a single data transmission at a time, the examiner agrees that a plurality of sources would not transmit data onto a transmission line/VCI at the same exact instant in time. A multiplexed ATM line would carry the cells of only a single data transmission at any one point in time. However, the applicant has only submitted proof

Art Unit: 2661

that ATM in fact multiplexes connections (e.g., see applicant's spec. pg. 1, lines 11-15, see especially the line where the applicant discloses T1, E1, DS-3, E-3, OC3, OC-12 which are all multiplexed connections).

5. Due to the indefiniteness of the limitation as explained in the 35 USC § 112 rejection, the following rejections are based upon the broadest interpretation of the claims, disregarding the limitation of the "non-multiplexed" link.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goguen (US 6,665,273) in view of Tomlins (US 6,618,383), as set forth in the previous office action.

Response to Arguments

Art Unit: 2661

In re pg. 10 the applicant argues nothing in Goguen teaches the claims' limitation.

In response the examiner maintains Goguen discloses checking a multiplexed connection's bandwidth/BW (monitor flow, col. 4, lines 53-65; track bytes, col. 5, lines 11-27; col. 7, lines 51-64; see 520, Fig. 5; 600, Fig. 6; 700, Fig. 7; 810, Fig. 8; 912, Fig. 9; col. 2, lines 23-32; col. 3, lines 42-44;) when muxed link has insufficient BW overflow call onto another link (onto TE tunnel, col. 3, lines 6-20; col. 3, lines 41-44).

Since Goguen discloses e.g., load balancing from a TE tunnel and a regular path (col. 3, lines 6-20), Goguen meets the claimed limitations because the applicant does not have a non-multiplexed connection.

Claim Rejections - 35 USC § 103

7. Claims 1-3, 6-8, 11-13, 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goguen (US 6,665,273) in view of 1999 IEEE article by Awduche, as set forth in the previous office action.

Goguen discloses checking a multiplexed connection's bandwidth/BW (monitor flow, col. 4, lines 53-65; track bytes, col. 5, lines 11-27; col. 7, lines 51-64; see 520, Fig. 5; 600, Fig. 6; 700, Fig. 7; 810, Fig. 8; 912, Fig. 9; col. 2, lines 23-

Art Unit: 2661

32; col. 3, lines 42-44;) and overflowing calls onto another link (onto TE tunnel, col. 3, lines 6-20; col. 3, lines 41-44).

Response to Arguments

In re pg. 10 the applicant argues nothing in Goguen teaches the claims' limitation.

In response the examiner maintains Goguen discloses checking a multiplexed connection's bandwidth/BW (monitor flow, col. 4, lines 53-65; track bytes, col. 5, lines 11-27; col. 7, lines 51-64; see 520, Fig. 5; 600, Fig. 6; 700, Fig. 7; 810, Fig. 8; 912, Fig. 9; col. 2, lines 23-32; col. 3, lines 42-44;) when muxed link has insufficient BW overflow call onto another link (onto TE tunnel, col. 3, lines 6-20; col. 3, lines 41-44).

Since Goguen discloses e.g., load balancing from a TE tunnel and a regular path (col. 3, lines 6-20), Goguen meets the claimed limitations because the applicant does not have a non-multiplexed connection.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

Art Unit: 2661


is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571 272 3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2661

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David R Vincent
Primary Examiner
Art Unit 2661

April 19, 2005